

State of New Jersey
Department of Labor and Workforce Development
Board of Review

MEMORANDUM

To: Joseph Sieber, Chairman;
Gerald Yarbrough, Vice Chairman;
Jerald Maddow, Member

FROM: Kathleen Wardell, Executive Secretary
Board of Review

Subject: Minutes of the August 3, 2011
Board of Review Meeting

Date: August 8, 2011

THESE MINUTES HAVE NOT BEEN FORMALLY APPROVED AND ARE SUBJECT TO CHANGE OR MODIFICATION BY THE BOARD OF REVIEW AT ITS NEXT MEETING. NO DECISION OF THE BOARD OF REVIEW IS FINAL UNTIL IT HAS BEEN MAILED TO THE INTERESTED PARTIES.

1. **FORMAL OPENING:** A regular meeting of the Board of Review, Department of Labor and Workforce Development was held on Wednesday, August 3, 2011 at 9:00 a.m. at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey. Notice of said meeting was posted in the Board of Review's office, filed with the Secretary of State, and published annually in The Trenton Times and The Star Ledger. **The next regular meeting of the Board of Review is scheduled for August 10, 2011 at 9:00 a.m.** at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey.

Roll Call: Present: Mr. Yarbrough, Vice Chairman
Mr. Maddow, Member
Ms. Wardell, Executive Secretary
Absent: Mr. Sieber, Chairman

2. Following a motion by Mr. Maddow and seconded by Mr. Yarbrough, the minutes of the July 27, 2011 meeting were approved.

3. New Business

(a) 303,447

Ms. Matos presented this case involving a claimant who was discharged from his job as a truck driver for throwing marbles out of the window of his truck while driving on the highway. The Appeal Tribunal held the claimant disqualified for benefits for simple misconduct under N.J.S.A. 43:21-5(b). The Appeal Tribunal found the claimant's actions were

willful and jeopardized the safety of all motorists and passengers on the highway at the time. The Board noted that the Appeal Tribunal decision supports a conclusion that the claimant's actions were not merely simple misconduct but rose to the level of severe misconduct. As a result, the Board voted to modify the decision of the Appeal Tribunal and hold the claimant disqualified for benefits for severe misconduct under N.J.S.A. 43:21-5(b). Ms. Matos will prepare the decision.

(b) 310,997

As described by Ms. Abrunzo, this case involved a claimant who was discharged from his job as a longshoreman after the Waterfront Commission revoked his waterfront pass as a result of the claimant being charged with drug trafficking and conspiracy. The waterfront pass was a prerequisite for the job. The Appeal Tribunal held the claimant disqualified for benefits for gross misconduct under N.J.S.A. 43:21-5(b). The Board noted that the claimant denied the charges and there was insufficient evidence on the record to support a conclusion that the claimant was guilty of a crime. Additionally, the Appeal Tribunal failed to address the actual reason for the separation which was the claimant's loss of his waterfront pass. As a result, the Board voted to issue a Decision to Remand, holding no disqualification under N.J.S.A. 43:21-5(b) and remanding the matter for additional testimony from the claimant and the employer and for the Appeal Tribunal to decide the matter under N.J.S.A. 43:21-5(a) as the separation was due to the loss of a prerequisite for the job. Ms. Abrunzo will prepare the Decision to Remand.

(c) 304,859

Ms. Jackson presented this case involving a claimant who was discharged from his job as a finance and insurance manager for falsifying records to increase his commission. The Appeal Tribunal held the claimant disqualified for benefits for severe misconduct under N.J.S.A. 43:21-5(b). The Board noted that there was insufficient evidence on the record to determine whether or not the claimant falsified any documents. As a result, the Board voted to remand the matter for additional testimony from the claimant and the employer, including the individual who trained the claimant who shall be subpoenaed, to determine whether or not the claimant falsified any records. Ms. Jackson will prepare the remand.

There being no further business to transact, a motion was made by Mr. Maddow to adjourn the meeting. Mr. Yarbrough seconded the motion.

SUBMITTED FOR APPROVAL:

Kathleen Wardell
Executive Secretary

KW:ldv